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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 MAURICE CARTER,

10 Petitioner,

11 v.

12 CYNTHIA Y. TAMPKINS ,

13 Respondent.

Case No.: 16-cv-2129-WQH-BGS

ORDER

14 HAYES, Judge:

15 The matter before the Court is the review of the Report and Recommendation issued
16 by United States Magistrate Judge (ECF No. 9) recommending that the Petitioner's Petition
17 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) be denied.

18 On October 17, 2018, the Court ordered Petitioner to file any objections to the Report
19 and Recommendation by November 7, 2018. (ECF No. 9). No objections have been filed.

20 The duties of the district court in connection with a report and recommendation of a
21 magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §
22 636(b). The district judge must "make a de novo determination of those portions of the
23 report . . . to which objection is made," and "may accept, reject, or modify, in whole or in
24 part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b). The
25 district court need not review de novo those portions of a Report and Recommendation to
26 which neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.
27 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)

1 ("Neither the Constitution nor the [Federal Magistrates Act] requires a district judge to
2 review, de novo, findings and recommendations that the parties themselves accept as
3 correct.").

4 The Court has reviewed the Report and Recommendation, the record, and the
5 submissions of the parties. The Court finds that the Magistrate Judge correctly
6 recommended that the Petition for Writ of Habeas Corpus filed by the Petitioner be denied.

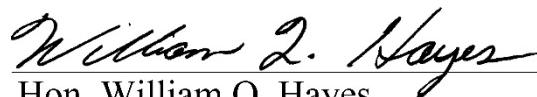
7 A certificate of appealability must be obtained by a petitioner in order to pursue an
8 appeal from a final order in a section 2254 habeas corpus proceeding. *See* 28 U.S.C. §
9 2253(c)(1)(A); Fed R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules Governing
10 Section 2254 Cases, "[t]he district court must issue or deny a certificate of appealability
11 when it enters a final order adverse to the applicant."

12 A certificate of appealability should be issued only where the petition presents "a
13 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). It must
14 appear that reasonable jurists could find the district court's assessment of the petitioner's
15 constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
16 The Court finds that for the reasons cited in the Report and Recommendation, Petitioner
17 has failed to make a substantial showing of the denial of a constitutional right. The Court
18 will not grant a certificate of appealability.

19 **Conclusion**

20 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 9) is
21 adopted in its entirety and the Petition for Writ of Habeas Corpus (ECF No. 1) is DENIED.
22 A certificate of appealability is DENIED. The Clerk of the Court shall enter judgment for
23 Respondent and against Petitioner and close the case.

24 Dated: December 18, 2018


25 Hon. William Q. Hayes
26 United States District Court
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